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ROBERT F. HILL (Ret.)

March 10, 2023

Rebecca Mitchell
Director
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203

Re: Special District No. 3 of the Rio Grande Water Conservation District Loan Approved
November 22, 2022.

Dear Director Mitchell:

The Colorado General Assembly established the Rio Grande Water Conservation District ("RGWCD") as an appropriate agency for the conservation, use, and development of the water resources of the Rio Grande and its tributaries. The legislation is codified at sections 37-48-101, et seq., C.R.S. That same legislation provided the RGWCD the ability to create one or more special improvement districts to accomplish specific purposes within a portion of the RGWCD. See § 37-48-108, C.R.S. In response to the drafting and promulgation of the Colorado Division of Water Resources' Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for all Irrigation Water Rights ("Groundwater Use Rules") the RGWCD and the water users within the District moved forward on creating six separate special improvement districts.

Based upon petitions filed by water users in the Conejos area, the RGWCD filed a Petition with the District Court, in and for Conejos County, to establish Special Improvement District No. 3 ("Subdistrict No. 3"). The District Court subsequently granted that petition. *Order Establishing Special Improvement District No. 3 of the Rio Grande Water Conservation District, Conejos Combined Court, Case No. 2016CV30021 (January 27, 2017)*. The Board of Managers of Subdistrict No. 3 then drafted a Plan of Water Management, which included a groundwater management plan, as the official plan of the Subdistrict pursuant to section 37-48-126, C.R.S. ("POWM"). The RGWCD Board of Directors approved the POWM June 13, 2018, The Colorado State Engineer approved the POWM pursuant to sections 37-48-126(2) and 37-92-501(4)(c), C.R.S. on August 27, 2018. By Resolution dated May 31, 2017, and

pursuant to Article 45.1 of Title 37 of the Colorado Revised Statutes, the Board of Managers of Subdistrict No. 3 established a Water Activity Enterprise.

The Water Court, in and for Water Division No. 3 upheld the Colorado State Engineer's proposed Groundwater Use Rules. *Findings of Fact, Conclusions of Law, Judgement and Decree, Case No. 2015CW3024, District Court, Water Division 3 (March 15, 2019)*. In general, the Groundwater Use Rules require that, if a non-exempt well is to continue to withdraw groundwater from within Water Division No. 3, such a well must remedy any injurious depletions to senior surface water users, achieve and maintain sustainable aquifers, and not unreasonably interfere with the State's ability to fulfill its obligations under the Rio Grande Compact. The Subdistrict No. 3 POWM is designed and intended to assure that, through its operations, Subdistrict Wells will comply with the Groundwater Use Rules.

The injurious depletions from Subdistrict Wells accrue to the Conejos River, Alamosa River and the Rio Grande. Remedying those depletions has presented numerous challenges for the Subdistrict. To date, Subdistrict No. 3 has been able to replace all injurious depletions on these rivers through forbearance agreements and other temporary replacement sources. Subdistrict No. 3 continues to seek reliable replacement sources to remedy all current and future injurious depletions on the Alamosa River, Conejos River and the Rio Grande. Subdistrict No. 3 has worked with the community to find replacement sources to remedy depletions on the Conejos River, Alamosa River and the Rio Grande, and the community has worked very well with the Subdistrict to provide temporary replacement sources to allow Subdistrict No. 3 time to secure more permanent or long-term replacement sources. The long-term goal of Subdistrict No. 3 is to secure permanent replacement sources.

For these and other reasons, the Subdistrict No. 3 Board of Managers has chosen to proceed with a plan to acquire two quarters of historically irrigated land with both surface and groundwater rights, and with adequate historical consumptive use, change the use of those water rights from irrigation to augmentation and replacement, and dry-up the previously irrigated acres. That water would then be transported by ditch or pipeline to the Conejos River in a manner that would remedy injurious depletions in time, location and amount. In order to fund the acquisition of the existing water rights and build the necessary infrastructure that will provide a long-term solution to remedy injurious depletions to the Conejos River and the Rio Grande and allow the Subdistrict Wells to continue to operate, the RGWCD, for and on behalf of the Subdistrict No. 3 Water Activity Enterprise, applied for a loan from the Colorado Water Conservation Board in the amount of two-million, five-hundred and fifty-five-thousand dollars (\$2,555,000.00) loan. The loan will be repaid of a 30-year term at a blended interest rate of 2.5% per annum.

The loan will be repaid from revenues derived from the fees levied and collected by the

Subdistrict on groundwater withdrawals within the Subdistrict. Attached to this letter is a budget projection from the Subdistrict showing that the Subdistrict can maintain its current activities and complete the repayment of the two-million, five-hundred and fifty-five-thousand dollars water acquisition and infrastructure loan sought by the Subdistrict.

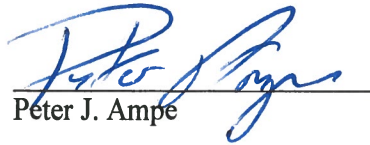
Pursuant to its POWM, the Subdistrict is entitled to raise funds by assessment of reasonable Annual Service and User Fees to carry out the goals and overall objective set forth in this Plan. *POWM* ¶ 4.1. The Subdistrict charges an Administrative Fee per Subdistrict Well to fund its general administrative operations. The Subdistrict also charges a Groundwater Withdrawal Fee based on the annual amount of Net Groundwater Withdrawals of a given Farm Unit, based on a five-year average, assessed one-year in arrears. There is no maximum limit on the Groundwater Withdrawal Fee. Instead, the Fee is set as part of the Subdistrict and District annual budget process and is set at the level necessary to fund the necessary programs and other expenses in the Subdistrict's budget. The revenues collected from the Groundwater Withdrawal Fee may be used to fund the remedy of injurious stream depletions caused by the withdrawal of groundwater from Subdistrict Wells. The current Groundwater Withdrawal Fee is based on the type of use: wells for sprinkler application are assessed \$21.35 on every acre-foot of groundwater withdrawn; wells for flood application are assessed \$15.43 on every acre-foot; and, wells that are used for other uses, such as, commercial, industrial, municipal and fish applications, were assessed a variable Groundwater Withdrawal Fee based upon the RGDSS Groundwater Model consumptive use. The POWM also provides that, should Subdistrict Wells not be allowed to continue to withdraw groundwater because Subdistrict objectives and goals are not being met, the Subdistrict and RGWCD may continue to assess fees until all Post-Plan Injurious Stream Depletions caused by past groundwater withdrawals from Subdistrict Wells have been remedied.

The RGWCD, on behalf of the Subdistrict, has the legal authority to acquire real property, which includes water rights. § 37-48-105(1)(b), C.R.S. The RGWCD is authorized to borrow money on behalf of the Subdistrict., § 37-48-105(1)(c), C.R.S.

This letter of opinion is based upon the understanding that the State Engineer will work with the RGWCD and Subdistrict No. 3 and the agricultural producers within the Subdistrict boundaries to ensure that irrigated agriculture continues to be viable during the term of the loan and is not impaired or restricted while the Subdistrict Wells are in compliance with the Groundwater Use Rules.

Ms Rebecca Mitchell
March 10, 2023
Page 4

Very truly yours,



Peter J. Ampe

cc: Peg Mason, Contracts Manager, CWCB
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